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REPORT TO THE COMMITTEE ON RULES, LEGISLATION,
AND INTERGOVERNMENTAL RELATIONS

SB 1256 - LEGAL EFFECT IF BILL ENACTED - DE ANZA MOBILEHOME PARK
- CAMPLAND

Item 4A on the Rules Committee agenda of September 20, 1989, involved proposed Senate Bill 1256 sponsored by State Senator William Craven. The bill would authorize the City Council to lease property in Mission Bay, presently comprising the De Anza Mobilehome Park and Campland, for a term expiring November 23, 2053. The bill was requested by representatives of the existing lessee of the two parcels, De Anza Corporation.

The purpose of the bill is to allow a lease term beyond the 50-year maximum specified in the Mission Bay tidelands grant from the State to the City by Chapter 142 of the State Statutes of 1945. The De Anza Corporation requested the extension of the maximum lease term to allow for the potential two-phase redevelopment of the mobilehome park and Campland properties. Because of a practical inability to immediately terminate the mobilehome park use, the plan proposed by De Anza envisions a phase one development which would minimize the impact on the existing mobilehome tenants, together with a phase two development which would occur upon expiration of the mobilehome park lease in 2003. Since the two phases would apparently be to some extent mutually economically dependent, and since the second phase would not commence for approximately 13 years, and since lenders for such developments generally require a lease term of close to 50 years, the concept is that the bill would allow the City Council to enter into a lease of the property, for example, in 1990 or 1991, which would have an approximately 50-year term remaining upon commencement of the second phase in the year 2003. Therefore, the bill specifies a term to expire November 23, 2053, which is exactly 50 years following the expiration of the existing mobilehome park lease.

It should be noted that a 63-year lease term would not be unique for California tidelands. In fact, California Civil Code section 718 and Government Code section 37385 both allow for a maximum lease term of 66 years for State tidelands unless some lesser maximum is specified in a particular tidelands grant.

At the Rules Committee meeting various questions were raised regarding the effect of SB 1256 if it becomes law. A copy of SB

1256 is attached for reference. The basic legal effect would be to provide the City Council with the option of entering into a lease of the subject property which would expire approximately 13 years later than the present law authorizes. The City Council would, of course, have no legal obligation to lease the subject property for the maximum period specified nor, in fact, would the Council have any legal obligation to enter into any new lease of the property.

A major legal issue raised at the Rules Committee involved the effect or potential effect of SB 1256 on the future use of the De Anza and Campland properties. The basic restrictions on the use of both parcels arise from the fact that the majority of both parcels are filled tidelands and remain subject to the tidelands trust pursuant to the State Constitution and specifically Chapter 142 of the State Statutes of 1945, together with the fact that the City has officially dedicated all of Mission Bay Park to park and recreation use. A discussion of the use restrictions applicable specifically to the mobilehome park lease area is contained in the attached memorandum of law dated August 11, 1989, commencing on page 4.

A hotel has been determined by the California Supreme Court to be a legal use of dedicated park land in circumstances where it is shown that a hotel is necessary and desirable to provide guest housing for park visitors. A hotel is also a legal use of state tidelands. There are in fact a number of hotels presently existing in both Mission Bay Park and on tidelands in San Diego Bay.

Therefore, there are no present restrictions on the City's legal ability to approve a hotel redevelopment on both the mobilehome park property and the Campland property except for any restrictions which may have resulted from the 1981 Kapiloff bill, a copy of which is attached to the August 11, 1989, memorandum of law. The Kapiloff bill specified in pertinent part that, with regard to the mobilehome park lease area, "on and after November 23, 2003, the lands shall be developed for park and recreation purposes consistent with the master plan for Mission Bay Park in effect on August 11, 1981."

The 1981 master plan calls for the mobilehome park area to be used for "guest housing" until 2003 and that then the "designation should be changed to park and shoreline unless a viable alternative proposal has been presented to modify the existing development and provide greater public access to the De Anza shoreline." It is our understanding that the De Anza Corporation intends to make such an alternative proposal for a

redevelopment which would presumably "provide greater public access to the De Anza shoreline."

Section 2 of SB 1256 reads in part as follows:

The Legislature hereby finds and declares that the lease authorized pursuant to Section 1 and the use of the lands for redevelopment for the term of the lease are in furtherance of trust purposes . . . and the provisions of Chapter 1008 of the Statutes of 1981 [Kapiloff bill].

The purpose of section 2 is uncertain. Apparently, section 2 was drafted when it was originally proposed to specifically authorize a hotel use in the bill. Section 1 was ultimately drafted with no mention of use so that section 2 is largely unnecessary. If SB 1256 is to be enacted, it could be improved by the deletion of the first sentence of section 2 which serves no real purpose in the absence of any language regarding actual use of the property. If the first sentence of section 2 were not deleted, opponents of the bill have a logical basis for arguing that the use restrictions imposed by the Kapiloff bill will have been somehow relaxed as a result of SB 1256.

In summary, SB 1256, from a legal standpoint, would merely grant the City a right to lease the De Anza and/or Campland properties for a term of 63 years rather than the present 50-year maximum term, assuming such lease were to be entered into in 1990.

The purpose of the bill would be to allow financing of a two-phase development with the second phase commencing in 2003. The bill would create no legal obligation on the part of the City to lease the property for any particular purpose or for any purpose or to any particular lessee.

The subject property must be developed and used in accordance with the tidelands trust and in accordance with the status of the property as dedicated public park land. A hotel development is legal in a large public park if the City Council makes a finding that such a hotel is needed to serve park visitors.

The 1981 Mission Bay Park Master Plan requires the mobilehome park property to be redeveloped as "Park and Shoreline unless a viable alternative proposal has been presented to modify [the] existing development and provide greater public access to the De Anza Shoreline." SB 1256, if enacted, could arguably relax the restrictions contained in the Kapiloff bill if the first sentence of section 2 of SB 1256 is not deleted.

Another question which arose at the Rules Committee hearing on September 20 involves the issue of whether the City Council

can be forced to review and/or approve a redevelopment plan for the De Anza area. As was pointed out at the hearing, the De Anza lease, as amended in 1982, specifically provides in part:

In consideration of the rental increase provided herein, LESSEE agrees that it will submit and CITY agrees that it will consider a Redevelopment Plan involving that portion of the demised premises which is not being utilized for mobile home space rental . . . The CITY may, at its sole discretion, accept, reject or modify the Redevelopment Plan and LESSEE agrees to be bound by such acceptance or rejection or to negotiate such modifications.

You will note that the lease language, while requiring the City to consider the redevelopment plan for the mobilehome park area, specifically points out that the City has the sole discretion to reject any such redevelopment plan.

As a related issue, it should be mentioned that the De Anza Mobilehome Park area and the Campland area have been included in computing the 25 percent of the land area which is authorized for commercial lease in Mission Bay Park pursuant to Charter section 55.1 approved by the voters in 1987. As you know, the 25 percent restriction is derived from Council Policy 700-8 which expresses that "it is the policy of the City Council that every effort shall be made to provide sufficient revenue from leases to cover the City's operating expenses for Mission Bay Park." It should also be noted that all revenues from tidelands must, as a legal matter, be spent for tidelands purposes. Whether or not the City will need revenues projected from any proposed redevelopment of the mobilehome park and Campland areas for future Mission Bay Park or other tidelands' needs would, therefore, appear to be a significant issue.

Finally, the matter of relocation and relocation costs which will be incurred in order to remove the existing mobilehome park residents should be considered in determining whether to ultimately support or oppose SB 1256. This office is informed that the De Anza Corporation has entered into signed agreements with the vast majority of existing mobilehome park tenants, which agreements provide for relocation at the expense of De Anza Corporation in the event the City Council approves a long term lease and redevelopment of the property by De Anza Corporation. If no such redevelopment is approved by the Council, it is our

opinion that there is presently no legal obligation on the part

of the City to pay such relocation costs. However, please see the discussion of relocation issues in the attached August 11, 1989, memorandum of law. You will note that there is some concern on the part of this office that the legislature could attempt to place a burden of paying relocation costs on cities through the enactment of some potential future legislation.

Respectfully submitted,
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City Attorney

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Attachment

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